IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

JAMES DOE, *Plaintiff,* *vs.* JOHN DENNIS HASTERT, *Defendant.*	CASE NO. 2016 L 0035 FILED SEP 10 2019 ROBYN INGEMUNSON CIRCUIT CLERK KENDALL CO.

ORDER

THIS MATTER comes before the court on the Plaintiff's Motion for Summary Judgment as to his complaint for breach of contract against the Defendant; seeking to enforce an unwritten agreement between the parties. Also before the court is the Defendant's Motion for Summary Judgment seeking judgment in his favor on the Plaintiff's Complaint. Counsel for the parties fully briefed and argued their respective motions, as well as their respective opposition to each other's motions. Accordingly, except as may be necessary with respect to this decision, the court will neither recite nor restate the parties' arguments.

The undisputed facts in this matter, while perhaps sensational, are rather straightforward. In the Spring of 2010, the parties met several times. Doe Dep. at 33:8, 46:8-14. Following several meetings, the parties reached an agreement. *Id.* at 22:15-19. The agreement was not in writing. *Id.* In accordance with their agreement, the Plaintiff agreed to keep his accusations of what he considered to be misconduct confidential. *Id.* at 22:23-23:6. Furthermore, the existence of the

parties' agreement was similarly to be strictly confidential. *Id.* at 23:7-10. Before reaching their agreement, the Plaintiff told the Defendant that he had spoken with his (Plaintiff's) father and brother about these matters. *Id.* at 58:13-14. At some point before meeting with the Defendant, the Plaintiff also discussed the issues with his therapist. *Id.* at 59:14-17. The Defendant agreed to pay the Plaintiff the sum of $3.5 million. *Id.* at 22:20-22. The Defendant began making periodic payments to the Plaintiff of $50,000.00. *Id.* at 53:4-12, 55:18-21. The payments were made in cash. *See*, Plea Agreement filed in 15 CR 315, U.S. Dist. Ct., N.D. Ill. on October 28, 2015, p.3. The Defendant paid a total of $1,700,000.00 to the Plaintiff. Plaintiff's Complaint ¶17, Defendant's Answer ¶17. The Defendant stopped making payments to the Plaintiff at or about the outset of the investigation by the FBI. Hastert Dep. 70:17-20.

After entering into the agreement with the Defendant, the Plaintiff disclosed the existence of the agreement to his wife. Doe Dep. 73:6-13. Plaintiff also disclosed the existence of the agreement to his father (*Id.* at96:16-21) and his brother (*Id.* at 97:15-98:4, 21-99:2). Some two years after the parties entered into their agreement, the Plaintiff disclosed the existence of the agreement to a high school friend. *Id.* at 99:3-21.

The Plaintiff also discussed matters with his brother-in-law, both before entering into the agreement[1] and afterwards. Ellis Cert., Ex. E, 27:4-9. Additionally, the Plaintiff's sister-in-law (the

[1]The copy of the redacted deposition of the brother-in-law submitted did not have a page number on the particular page of this testimony, and no specific citation is provided.

brother-in-law's wife) knew of the existence of the parties' agreement. Ellis Cert., Ex. C, 20:2-12. And learned of it from her husband. *Id.*

In December of 2014, the an agent with the FBI spoke with the Defendant about the withdrawals of cash which he made. Hastert Dep. 71:10-72:6. Subsequently, the Plaintiff spoke with agents of the FBI. *See, e.g.,* Doe Dep. 49:9-11. Following his initial interview with the FBI, the Defendant ceased making payments to the Plaintiff. Hastert Dep. 71:5-9. As a result of the FBI investigation, the Defendant was charged with lying to the FBI and structuring transactions to evade reporting requirements. *See*, Indictment in 15 CR 315, U.S. Dist. Ct., N.D. Ill. The Defendant plead guilty to these offenses. *See*, Plea Agreement filed in 15 CR 315, U.S. Dist. Ct., N.D. Ill. As a result of the publicity of the criminal proceedings in federal court, the existence of the allegations of the Defendant's past misconduct toward the Plaintiff, as well as the existence of their agreement, became public.

The purpose of a summary judgment proceeding is not to try an issue of fact, but to determine whether one exists. *Mydlach v. Daimler Chrysler Corp.*, 226 Ill.2d 307, 311 (2007). Summary judgment is appropriate ". . . if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016.) Although summary judgment aids in the expeditious disposition of a lawsuit, it is a drastic measure and should be granted only if the moving party's right to a judgment is clear and free from doubt. *Purtill v. Hess*, 111 Ill.2d 229, 240 (1986). The pleadings, depositions, admissions on file must be construed against the movant and in favor of the opposing party. *Addison v. Whittenberg*, 124 Ill.2d 287, 294 (1988).

Summary judgment is not appropriate where material facts are disputed, or if material facts are undisputed, where reasonable persons may draw different inferences from undisputed facts. *Williams v Manchester*, 228 Ill.2d 404, 417 (2008). "The nonmoving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment." *Land v. Board of Education*, 202 Ill.2d 414, 432 (2002). "A motion for summary judgment should be denied if the facts in the record present more than one conclusion or inference, including one unfavorable to the movant." *Hahn v. Union Pacific R.R. Co.*, 352 Ill.App.3d 922, 929 (5th Dist. 2004).

"[W]hen . . . the parties file cross-motions for summary judgment, they invite the court to decide the matter as a question of law. However, if a genuine issue of material fact precluding judgment for either party exists, summary judgment should not be granted to either party." *Fidelity Nat'l. Title Ins. Co. v. Westhaven Props. P'ship.*, 386 Ill.App.3d 201, 212 (1st Dist. 2007).

Plaintiff contends that in order to succeed with his breach of contract claim, he must prove: "(1) offer and acceptance, (2) consideration, (3) definite and certain terms, (4) performance by the Plaintiff of all required conditions, (5) breach, and (6) damages." *Vill. of S. Elgin v. Waste Mgmt. of Ill., Inc.*, 348 Ill.App.3d 929,940 (2d Dist. 2004). The Plaintiff contends that he has done so. However, as the uncontested fact show, the Plaintiff agreed to keep the parties' agreement confidential. Doe Dep. 22:23-23:6. He also agreed to keep it strictly confidential. *Id.* at 23:7-10.

> The principal objective in construing a contract is to ascertain and give effect to the intent of the parties. "Intent" refers to objective manifestations of intent in the words of the contract and the actions of the parties; it does not encompass one party's secret, undisclosed intentions or purely subjective understandings of which the other party is unaware. Terms are to be given their ordinary meaning unless it appears that the

> parties intended them to carry some other meaning. Put another way, "Unless the contract clearly defines its terms, the court must give the contractual language its common and generally accepted meaning." The party asserting that a term has some meaning other than its ordinary one bears the burden of establishing the nonstandard usage of the term. *Vill. of S. Elgin v. Waste Mgmt. of Ill., Inc.* at 941. [Citations omitted.]

The Plaintiff interprets his obligation to keep the accusations of Defendant's misconduct and the existence of the parties' agreement confidential to mean that he "does not file suit, does not go to the police, does not go to the media, and generally keeps the claim from becoming public knowledge." Plaintiff's Motion for Summary Judgment, p. 8, lines 13-14. Black's Law Dictionary defines confidential as "meant to be kept secret". Black's Law Dictionary, 10th Edition.

Before entering into his agreement with the Defendant, the Plaintiff discussed the events which occurred between he and the Defendant with his father and brother, as well as his therapist. He also apparently discussed it with his brother-in-law. Any such discussions occurred before the parties entered into their agreement, and are not relevant to a resolution of the issue before the court.

However, once he entered into the agreement with the Defendant, the Plaintiff had an obligation not to discuss it further. He needed to keep it secret. He breached that obligation by continuing to discuss it with his family members, as well as with a friend from high school. It is also evident that at least one person with whom he discussed the existence of the agreement redisclosed the information to others. Accordingly, the Plaintiff failed to keep the existence of the Defendant's misconduct and their agreement confidential.

Plaintiff cannot change the meaning of the confidential nature of their agreement to mean that he "does not file suit, does not go to the police, does not go to the media, and generally keeps the

claim from becoming public knowledge." These are additional terms which were not discussed by the parties. Perhaps it was his subjective understanding, but his subjective understanding is not the intent of the parties.

Plaintiff's breach of the parties agreement occurred before he was interviewed by the FBI. If, after entering into his agreement with the Defendant, the Plaintiff only disclosed the existence of the parties' agreement to the FBI with respect to their investigation of the Defendant's violation of federal law, then public policy would support his contention that such a disclosure was not a breach of the confidential nature of their agreement. Unfortunately for the Plaintiff, he disclosed the agreement and its subject matter to others before he was interviewed by the FBI. Thus, the court does not address whether the disclosure to the FBI was a breach of the parties' agreement, as the Plaintiff previously breached the agreement before speaking with the FBI.

However, in Illinois,

> only a material breach of a contract provision by one party will justify nonperformance by the other. The test of whether a breach is "material" is whether it is "so substantial and fundamental as to defeat the objects of the parties in making the agreement, or whether the failure to perform renders performance of the rest of the contract different in substance from the original agreement." "The breach must be so material and important to justify the injured party in regarding the whole transaction at an end." The issue of whether a material breach of contract has been committed is a question of fact, and the trial court's judgment will not be disturbed unless it is against the manifest weight of the evidence. *Insureone Indep. Ins. Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385 ¶43. [Citations omitted.]

Additionally, "[t]he determination of whether a breach is material is a complicated question of fact involving an inquiry into such matters as whether the breach worked to defeat the bargained-for objective of the parties or caused disproportionate prejudice to the non-breaching

party, whether custom and usage considers such a breach to be material, and whether the allowance of reciprocal non-performance by the non-breaching party will result in his accrual of an unreasonable or unfair advantage." *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill.App.3d 324, 346-347 (1st Dist. 2005). [Citation omitted.]

As the issue of whether the breach of the parties' agreement by the Plaintiff is a material breach of their agreement; and the determination of such is an issue of fact and not an issue of law, the parties' cross-motions for summary judgment are denied.

Enter: September 10, 2019.

Robert P. Pilmer

Hon. Robert P. Pilmer